The Kentucky Commentator

University of Kentucky College of Law

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Osborn Attacks Bar Exam

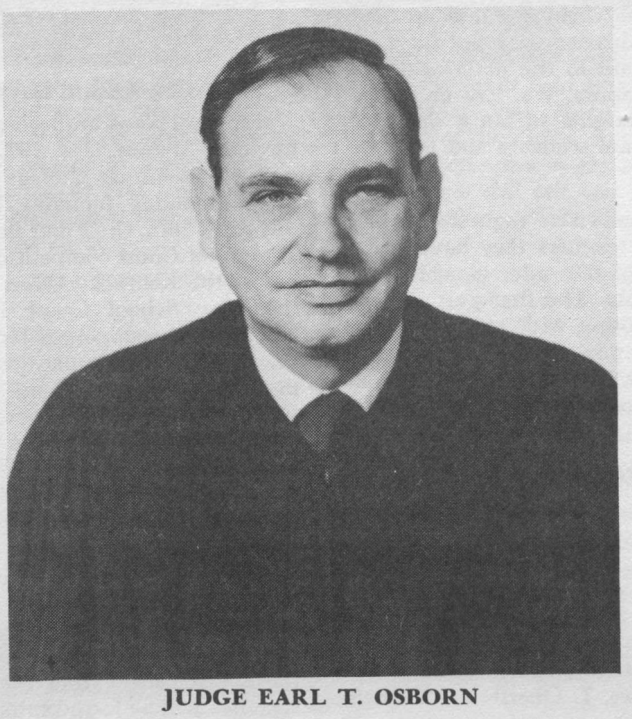
Judge Earl T. Osborn was elected to the Court of Appeals in 1967, becoming the youngest member of the Court. A native of Ballard County, he graduated from Kevil High School and received his L.L.B degree from the University of Kentucky College of Law in 1950. Judge Osborn spent six years with the U.S. Air Force in World War II as a pilot in the European theatre of operations. He practiced law in Benton, Kentucky where he now makes his home until 1957 when he was elected Circuit Judge for the 47th judicial district. He is married and has four children. Judge Osborn has become well known during his short tenure on the Court mainly because of his controversial dissents.

The bar examination as presently structured represents a tremendous waste of time and energy and is a needlessly traumatic experience. The law student, after completing three years of study and receiving his degree, must devote a period of weeks to preparing for the examination and then must either stand idle or find non-legal employment while he waits several months for the results. After finishing school in May, he cannot begin practice until September, some four months later. In addition, even the best student trembles with anxiety as he awaits the results. The delay is unavoidable under our present system. So long as the bar examination is to consist of three days of essay questions given and graded by three practicing members of the bar, after the completion of the student's legal education, there is no way to speed up the process or remove the anxiety experienced by the applicant.

There has recently been some pressure to abolish or change the bar examination. There was a bill introduced at the last legislature with some lobbying by groups of law students. I do not believe the legislature is the proper place to seek such change.

KRS 30.030 to 30.060 covers admission to the bar other than by reciprocity. KRS 30.030 provides: "The Court of Appeals of Kentucky shall make such rules and regulations as it deems proper regulating the admission of persons to practice law in this state, including—regulations as to—examinations."

However, the subsequent sections provide for a board



JUDGE EARL T. OSBORN

of bar examiners, perhaps thereby requiring a bar examination. Whether the legislature could so regulate the admission of attorneys if the court decided otherwise is not questionable. The admission to practice is inherently a function of the court, and under our doctrine of separation of powers it would seem that the final authority to require or not to require a bar examination would rest in the Court of Appeals. KRS 30.030 seems to recognize this because the final sentence states: "The full and complete power and authority of the Court of Appeals to make such rules and regulations and to change and amend the same from time to time is hereby **recognized** and confirmed." (Emphasis added).

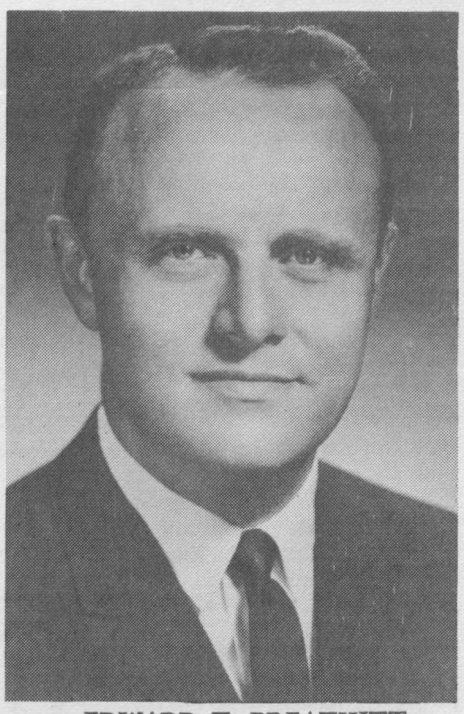
The bar examination has its origin in a time when the average applicant was not a graduate of a law school and where the quality of the law schools was not as uniformly high as at present. At that time the bar examination was needed to determine if the applicant had been properly educated in the law. Today, the necessity of such a test after a student has graduated from one of the Kentucky law schools seems doubtful. It stands merely as an added obstacle to be surmounted. It does weed out a few. However, it might be questioned whether the elimination is of those not qualified to practice law or of those who have difficulty in performing under the grueling ordeal of the exam.

There are arguments in favor of keeping a bar examination. The law schools are not responsible to the bar. There is some feeling among the bar that a bar examination is necessary to keep some control over the legal education process. The exam may also serve some function in tying the entire course of study in law school together. The bar examination is the first time a student is given a question without being told what area of law is covered and the exam requires a review of all the fundamental courses.

I propose a compromise between the extremes of keeping the present system or of eliminating a bar examination altogether. I would favor an examination prepared and graded by the bar examiners, with the assistance of the law school faculty. The exam would be given sometime during the last year of law school. This would have several advantages. By giving the examination during the year and having the faculty assist in grading it, the test could be graded and the results evaluated by the time of graduation. This would eliminate the significant delay and the anguish of an idle period spent in merely waiting for the result. Participation by the faculty would lead to closer coordination between the law school training and the exam. Furthermore, this system would still allow the bar to maintain control and supervision over the admission of new attorneys through the participation of the bar examiners. This system would be completely consistent with the present legislation and could be done completely by court rule.

Hon. Edward T. Breathitt

Politics And The Young Lawyer



EDWARD T. BREATHITT

I need not catalogue the problems which confront the younger lawyer beginning his career. After seven or so years of formal education, in the course of which he has probably accumulated debts and family obligations, he enters the profession with high expectations. Like most of us, he may soon find that the monetary and psychological rewards to the younger lawyer's labor are low at the outset. The market is sharply competitive on the supply side and distinctly favors the buyer.

One all-too-familiar consequence is the phenomenon of law graduates who never enter the practicing profession or leave it, after a short time, for more rewarding activities. The process deprives the Bar of some of its finest potential talent and strength. I would identify it as the number one problem of my profession.

For those who remain, upward mobility often requires that they seek recognition and distinction outside the profession as such. Activity in politics is one often-used avenue to such exposure; and within ill-defined limits, this is acceptable professional behavior.

The younger lawyer can enhance the quality of public decision-making processes. His skill in defining and analyzing complex issues is always in demand. His contribution is potentially invaluable when he thinks of himself as a **specialist in conflict resolution,** in behalf of broad public needs, rather than as the advocate of limited interests. Surely there is nothing amiss if, through such service, the younger lawyer attracts the recognition which promotes professional mobility and the rewards of practice.

Let us be frank among ourselves, however, and recognize the temptations of politics to the younger lawyer. The political process controls or influences flows of money, goods and services in the local community and statewide—jobs, capital, contracts, supplies, licenses, privileges. Too many people are prepared to exploit the process for personal or corporate advantage, without regard to maintaining the integrity of public decision-making and the effectiveness of public institutions.

One consequence is enormous public expenditure for "policy-ing"—securing compliance with public policies as defined by the authorized institutions of government. Another is the occasionally chaotic pattern of public administration as claims are disputed and litigated.

A third, and still more ominous, consequence is the transfer of certain kinds of public decisions from more strictly "legal" process to the discretion of public officials. Where the legal process—and in large measure this means the behavior of lawyers and their clients—is inconsistent with orderly, efficient "policy-ing" of the public interest, lawmakers have chosen to turn decisions over to "administrative discretion," with limited and sometimes meaningless legal controls. Every law student can recite examples in which this amounted to the exchange of one evil for another.

Lawyers can decisively influence the quality of political institutions through the choices they make—for themselves and for their clients. While some legal constraints exist, in most instances, conscience is the only guide.

Political life in Kentucky often poses hard ethical choices. At such times, the lawyer may be handicapped in comparison with others because he is attuned to value-relativism: indeed, moral sensitivity can sometimes interfere with service to his private clients. He may be tempted to rationalize his actions in the public arena by reference to his appropriate role in private civil matters. Yet sound guidance requires that he "disenthrall" himself from his role as advocate and rationalizer and interrogate his conscience.

If this seems simplistic, may I suggest that more elaborate formulations of the philosophical and ethical problems of the lawyer in politics reduce to some comparable statement. Let me add that I have seen young men of high principle and potential become demoralized and ineffective through unprincipled political activity. They became lost in tangled rationalizations for behavior which their inner consciences knew to be wrong.

This is the great peril which young lawyers in Kentucky face when they choose to embark in politics. Despite the successes of reformers, particularly those in journalism, too much of our state and local politics remains brutal, unsanitary and amoral. I would blame this less on political organizations as such than on highly permissive public attitudes toward exploitative political practices. We condone abuses of conscience and principle in state and local politics which we deplore in national politics. We give too little recognition to better motivated organizations and individuals.

Given the climate of permissiveness, it is easy for younger attorneys to perpetuate the system if they enter it uncertain of their motives. Some sage has observed that it is easier to become resigned to office than to resign from it. **Mutatis mutandis** the same applies to exploitative political practices. Progress occurs when young men are ready for politics before our politics is ready for them.

Given these premises, you will not be surprised if I encourage a younger lawyer to limit his political activity until he is convinced in good conscience that his will be a positive contribution to government and politics in Kentucky.

The political system should represent the highest aspirations of our society. It needs men who can advance these aspirations.

COMMENT

Teacher Evaluation Poll

For quite some time there has been talk of teacher evaluation at the College of Law. On January 27 the **Kentucky Commentator** polled the second and third year law students for their opinion of the law school faculty. As each questionnaire was prefaced, the purpose of this endeavor was not to direct an attack on anyone. Its objective is to express the views of second and third year law students toward the professors to whom they have been exposed. It would obviously be presumptuous for the **Commentator** to allege that the poll was infallible. In fact, a quick look will show that there are many "holes" in it. But through all of its defects there appears enough evidence of accurate solicitation to give it constructive substance. Simply put it is more accurate than inaccurate. And after all of course, we are not professional pollsters but law students (and some teachers would no doubt like a poll on the latter). Being law students, our evaluation may not be a professional opinion as to what is good instruction in regard to the practice of law. In other words, the old Mark Twain addage may well apply. We may be amazed at how much some "poor" instructors attain Socratic heights within a short time after graduation. Nevertheless the fact remains that we are students and from that basis only are we able to judge.

There were twelve categories in the questionnaire. Students were requested to vote for the top five in each category and could only vote for teachers they have had in class. In tabulating the results, there was no treatment of the order in which they were listed. The results are reported in two separate parts. The first part is based merely on the straight vote returns of the 116 students voting with teachers ranked according to the number of votes received. The second part is much more telling since the rating is according to the percentage of votes a teacher receives from the number of students actually having him in class. In both parts, the top ten teachers in each category are listed.

PART ONE—NUMBER OF VOTES RECEIVED

I. Exhibits the most knowledge of subject matter. 1. Ham, 2. Sedler, 3. Flickinger and Lawson (tied), 5. Kennedy, 6. Matthews, 7. Oberst, 8. Mooney, 9. Styn, 10. Whiteside.

II. Teaches the most substantive material which in your opinion will be most practical after graduation. 1. Lawson, 2. Flickinger, 3. Ham and Sedler (tied), 5. Kennedy, 6. Matthews, 7. Richardson and Williamson (tied), 9. Styn, 10. Trigg.

III. Shows in the classroom the most interest in student development. 1. Lawson, 2. Sedler, 3. Ham, 4. Flickinger, 5. Kennedy, 6. Matthews, 7. Oberst and Williamson (tied), 9. Styn, 10. Batt.

IV. Portrays best rapport with students in classroom. 1. Lawson, 2. Flickinger, 3. Styn, 4. Kennedy, 5. Matthews, 6. Batt, 7. Ham, 8. Williamson, 9. Sedler, 10. Mooney.

V. Is the best prepared for daily presentations. 1. Ham, 2. Lawson, 3. Sedler, 4. Flickinger, 5. Kennedy, 6. Oberst, 7. Styn, 8. Matthews, 9. Williamson, 10. Bivin.

VI. Is the best in sustaining student interest during classroom presentation. 1. Lawson, 2. Sedler, 3. Flickinger, 4. Batt, 5. Styn, 6. Mooney, 7. Kennedy and Matthews (tied), 9. Oberst, 10. Trigg.

VII. Makes the most unreasonable assignments in length and content. 1. Guido, 2. Mooney, 3. Sedler, 4. Lawson, 5. Batt, 6. Oberst, 7. Seney, 8. Bivin, 9. Ham and Viles (tied).

VIII. Has the most potential unutilized. 1. Mooney, 2. Ellinwood, 3. Batt, 4. Bivin, 5. Whiteside, 6. Guido, 7. Viles, 8. Richardson, 9. Seney, 10. Williamson.

IX. Has made the most progress as an instructor during your law school tenure. 1. Sedler, 2. Ellinwood, 3. Bivin, 4. Lawson and Mooney (tied), 6. Styn, 7. Goldman, 8. Viles, 9. Williamson, 10. Flickinger.

X. Is the most abreast of the current state of the law. 1. Ham, 2. Sedler, 3. Lawson, 4. Flickinger, 5. Oberst, 6. Whiteside, 7. Kennedy, 8. Styn, 9. Richardson, 10. Trigg.

XI. Has the most distractive classroom mannerisms. 1. Ellinwood, 2. Whiteside, 3. Guido, 4. Richardson, 5. Oberst, 6. Mooney, 7. Bivin, 8. Viles, 9. Sedler, 10. Ham.

XII. List the five professors in order that you think are the most outstanding in the classroom and would like to take again. 1. Lawson, 2. Flickinger, 3. Sedler, 4. Kennedy, 5. Matthews and Styn (tied).

PART TWO—PERCENTAGE CALCULATION

I. Exhibits the most knowledge of subject matter. 1. Sedler 73%, 2. Matthews 68%, 3. Ham 67.3%, 4. Kennedy 67%, 5. Lawson 66%, 6. Flickinger 64%, 7. Rozzelle 44%, 8. Styn 43.8%, 9. Oberst 43%, 10. Affeldt 36%.

II. Teaches the most substantive material which in your opinion will be most practical after graduation. 1. Lawson 73%, 2. Trigg 62%, 3. Sedler 58%, 4. Matthews 54.9%, 5. Flickinger 54%, 6. Kennedy 53%, 7. Ham 47.8%, 8. Affeldt 47.4%, 9. Styn 43%, 10. Williamson 33.4%.

III. Shows in the classroom the most interest in student development. 1. Lawson 77%, 2. Sedler 64%, 3. Kennedy 56%, 4. Ham 49%, 5. Styn 46%, 6. Flickinger 44%, 7. Trigg 41%, 8. Fortune 36%, 9. Oberst 35%, 10. Affeldt 34%.

IV. Portrays best rapport with students in classroom. 1. Lawson 78%, 2. Styn 70%, 3. Matthews 61%, 4. Kennedy 60%, 5. Flickinger 56%, 6. Trigg 41%, 7. Sedler 38%, 8. Ham 36%, 9. Batt 34%, 10. Rozzelle 33%.

V. Is the best prepared for daily presentations. 1. Sedler 85%, 2. Ham 76%, 3. Lawson 71%, 4. Styn 60%, 5. Flickinger 59%, 6. Matthews 52%, 7. Kennedy 48%, 8. Oberst 42%, 9. Rozzelle 39%, 10. Goldman 29%.

VI. Is the best in sustaining student interest during classroom presentation. 1. Sedler 81%, 2. Lawson 74%, 3. Styn 67%, 4. Flickinger 62%, 5. Trigg 54%, 6. Matthews 50%, 7. Kennedy 48%, 8. Batt 47%, 9. Affeldt 42%, 10. Rozzelle 39%.

VII. Makes the most unreasonable assignments in length and content. 1. Guido 87%, 2. Seney 51%, 3. Mooney 42%, 4. Viles 38%, 5. Lawson 36%, 6. Oberst 30%, 7. Kennedy 28%, 8. Batt 26%, 9. Sedler 25%, 10. Bivin 21%.

VIII. Has the most potential unutilized. 1. Mooney 60%, 2. Seney 46%, 3. Viles 45%, 4. Ellinwood 44%, 5. Batt 34%, 6. Bivin 33%, 7. Whiteside 28%, 8. Guido 25%, 9. Richardson 23%, 10. Goldman 20%.

IX. Has made the most progress as an instructor during your law school tenure. 1. Styn 46%, 2. Goldman 33%, 3. Sedler 33%, 4. Viles 29%, 5. Ellinwood 28%, 6. Bivin 23.6%, 7. Fortune 23.5%, 8. Mooney 18%, 9. Willis 16%, 10. Affeldt 13%.

X. Is the most abreast of the current state of the law. 1. Sedler 68%, 2. Ham 61%, 3. Lawson 51%, 4. Oberst 49%, 5. Trigg 48%, 6. Flickinger 47%, 7. Kennedy 45%, 8. Styn 34%, 9. Affeldt 37%, 10. Goldman 33%.

XI. Has the most distractive classroom mannerisms. 1. Ellinwood 88%, 2. Guido 83%, 3. Whiteside 70%, 4. Viles 50%, 5. Richardson 49%, 6. Oberst 34%, 7. Seney 33%, 8. Bivin 30%, 9. Sedler 29%, 10. Mooney 26%.

XII. List the five professors in order that you think are the most outstanding in the classroom and would like to take again. 1. Sedler 77.3%, 2. Lawson 77.2%, 3. Styn 72%, 4. Flickinger 70%, 5. Kennedy 64%.

Others: Matthews 66%, Affeldt 44%, Ham 42%, Rozzelle 39%, Goldman 36%, Oberst 31%, Williamson and Mooney 24%.

ON THE DOCKET

Bar Review Course

The proposed bar review course has progressed to the point where a preliminary report can be made.

Five instructors have been contacted thus far and have agreed to cover fourteen subjects, with two subjects yet to be assigned. The projected schedule is for four nights a week, Monday through Thursday beginning May 19 and ending June 26. The sessions will be composed of two ninety minute classes each night with an thirty minute break. The tentative starting will probably be seven o'clock.

Watch the next issue of the **Commentator** for complete details.

Law-Alumni Days 1969

Program plans are becoming structured for Law-Alumni Day 1969 at the University of Kentucky College of Law. Tentative scheduling includes: (1) On Thursday April 10th, the Final Round of Second Year Moot Court competition will be held before the Kentucky Court of Appeals in the Law School Court Room (2) On Friday Afternoon, April 11th, the Annual Practice Court Competition will be held in the Law School Court Room. (3) On Friday Evening, a keynote speaker will inaugurate a program of fine speakers now being contacted. (4) The Annual Awards Luncheon Banquet will be held on Saturday at noon and (5) to climax this week-end the Law Day Banquet and Dance will be held at the Phoenix Hotel.

This is a Law-Alumni Day and all alumni are especially invited to attend these programs. More infomation and specifics will be forthcoming via the mails but if anyone wishes immediate advance information please contact Victor Fox, Law-Alumni Chairman 1969.

The participation of alumni is of vital importance to the success of this program and its significance. The SBA hopes a significant number of you will show an interest and assures you of a meaningful and memorable week-end of educational and entertaining programs.

Legal Aid On A Shoe String

The Fayette County Legal Aid Corporation is a joint effort by the Fayette County Bar Association, the city of Lexington, Fayette County, and the University of Kentucky College of Law to meet the needs of the indigent in Lexington and Fayette County. The following is a brief description of its organization.

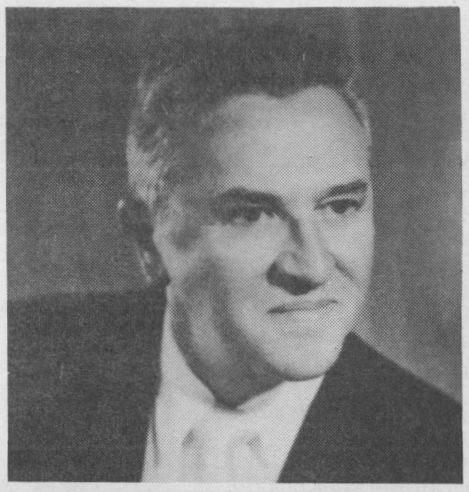
The legal aid corporation employs a local attorney who devotes half of his time to handling civil cases and serving as the program director. The corporation also has a full time paid assistant director who acts as secretary to the organization and assigns lawyers and law students in criminal cases. Recently, the corporation has hired two public defenders for juvenile cases, both employed on a parttime basis. The funds for the above are provided by the Lexington and Fayette County governments. The University of Kentucky College of law pays one parttime faculty member and one parttime student assistant to oversee student participation in the program.

All other participants in the legal aid progrr
aid program are volunteers. Fayette County lawyers provide legal services without fees. Law students do investigative and research work also without monetary compensation. However, they do receive one hour of academic credit.

The legal aid program does a good job in view of its limited resources. However, most everyone involved, lawyers, public officials, and students, believe that the program should be expanded, and the corporation is now engaged in a study of how this might be done.

Two proposals now being considered by the legal aid corporation would greatly improve the present legal aid program. The first proposal is to hire some additional attorneys or some assistants to the present director. The second proposal is to allow law students to participate in the trial stage as well as the investigative stage of criminal cases.

The first proposal would make the duties of the director somewhat more realistic. The second proposal would lift some of the burden of representing indigents from the lawyers and free them to concentrate all their efforts on the more difficult cases.



HONORABLE MOE LEVINE

Moe Levine Speaks at Law School

The Honorable Moe Levine, well known malpractice lawyer of the Moe Levine & Aaron J. Broder Law Fim in New York, spoke at the University of Kentucky College of Law February 4. Mr. Levine has served as Governor for the Second Circuit of the New York State Association of Trial Lawyers and is an effective and articulate lecturer. He received his legal education at the Brooklyn Law School of St. Lawrence University.

The New York advocate has gained prestige with his skills in the field of personal injury and malpractice cases.

Moot Court

The University of Kentucky Moot Court team has returned slightly battered but still upright, from the regional competition in Knoxville.

The region is composed of eight schools from three states: Valparaiso, Indiana (at Bloomington and at Indianapolis), University of Louisville, UK, U.T., Vanderbilt and Memphis State—each law school represented by a three man team.

Our team composed of Larry Greathouse, John Leith, and Dean Rice defeated Indiana (Bloomington) in the first round and advanced to the semi-finals along with U. of L., U.T., and Vandy. Unfortunately for the Bluegrass State, both Tennessee teams prevailed with Vandy edging U.T. in the finals.

In summarizing the trip south, John Leith, speaking for the entire team, said that the experience was invaluable and that although the team was disappointed in failing to bring home any brass, "we've all picked up some pointers which should go a long way in helping next year's team get to New York."

NOTICE

The hole in the doughnut fund has widened this semester. Twenty doughnuts (forty of the glazed variety) disappear on a good day. If more law school orphans would decline to take welfare from the sorority, the sorority will be able to decline taking bankruptcy. Otherwise, it will have to pack up the doughnuts and go out of business. Those law students guilty of such larceny can then start crying when the vending monsters thieve their funds away. Justice would have come full cycle.

NEXT ISSUE

HARRY CAUDILL, well known Kentuckian will discuss the mining safety laws of Kentucky.

Commentator Subscriptions

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ON THE STAND . . . Professor Sedler

Robert Allen Sedler has been an Associate Professor of Law at the University of Kentucky since 1967. He teaches Remedies, Conflicts of Laws and Civil Rights. After receiving his B.A. and LLB. degrees from the University of Pittsburg, Professor Sedler was a Visiting Assistant Professor at Rutgers University in 1961; Assistant Professor of Law, 1961-64, Associate Professor of Law, 1964-65 at Saint Louis University; and Assistant Dean and Associate Professor, Haile Sellassie I University, 1963-66. An ardent civil libertarian, Professor Sedler is noted for his defense of liberal causes in Kentucky.

"There are those who take the position that it creates bad public relations with certain segments of the community for a law professor to engage in "controversial activities" to the extent that I do, but it has never been questioned that if I want to do it, I have the right."

"Because the cases I do take and litigate are significant ones, there is usually a good deal of publicity, and this leads people to accuse me of seeking publicity --the reporters will tell you that the reverse is true."

"I don't think that I am guilty of attempting to indoctrinate students into a particural viewpoint. On the other hand, when I have views in the class or elsewhere, I don't hesitate to express them."

Commentator: You first came to the University of Kentucky as a visiting professor, I believe. Why did you decide to stay?

Mr. Sedler: Well, actually the initial appointment was really a matter of form. By that I mean every new person comes for a one year appointment. In view of the fact that I had some experience elsewhere and I taught previously, they had to make the appointment in that form, but when I came here it was with the intention to stay.

Commentator: Was there anything about the state of Kentucky that attracted you and made you want to come to this particular state?

Mr. Sedler: I was attracted particularly by the Law School. I came here from abroad and I had interviewed a number of schools. I received offers from Kentucky and other schools, and I decided that of those schools the University of Kentucky Law School was the best place to come. It has always had a very good reputation. I met a number of the faculty at the Law Schools' Convention, and I was very impressed. I was attracted, however, by the idea of coming to a state university and did come with the view of participating in public affairs in the state. I think that being a law professor at a state university school gives you this kind of opportunity. I also liked the prospect of coming to a smaller state, such as Kentucky, where I think there is more opportunity for this kind of participation.

Commentator: Mr. Sedler, you are teaching in a state which is rather conservative, at least conservative enough to enact its own un-American activities committee. Has there been any attempt to bring political pressure against you because of your position at the University?

Mr. Sedler: There has been no attempt to bring any pressure on me by anyone in the University. The University and the Law School have always operated within the framework of academic freedom as it is recognized in this country. There has never been any question of my being entitled to engage in this form of public service—and I consider what I do a form of public service. Naturally I must carry out my responsibilities as a full-time law professor to perform my academic duties, to meet my classes, to serve on Law School and University committees, to publish, to participate in the affairs of the Law School, and there has never been any doubt that I have done this. The public service that I perform is something I do in addition. So far there has been no dirct pressure on me in any way, and I don't expect that there ever will be. Now this doesn't mean that there aren't some people in the University who may be unhappy about some of my activities. There are those who take the position that it creates bad public relations with certain members of the bar and certain segments of the community for a law professor to engage in "controversial" activities to the extent that I do, but it has never been questioned that if I want to do it, I have that right. Thus, I have never felt inhibited in doing what I want to do and what I believe is right.

Commentator: Do you anticipate any pressures in the future?

Mr. Sedler: Well I don't know what you mean by pressures, I don't expect any official of the University to say to me, stop what you're doing, and I don't expect any kind of infomal sanctions. As a citizen I am entitled to speak out on public issues. As a member of the bar I am entitled to participate in litigation. This is what I am doing, and I don't see anything wrong in my doing so.

Commentator: You mentioned that some people have said that professorial extracurricular activities of the controvesial variety have created bad publicity for the Law School. Do you feel that this criticism is justified?

Mr. Sedler: It is accurate if you recognize that the Law School has a number of "publics." When professors are engaged in controversial activity, this may create a "bad image" with some segment of the public, but by the same token it creates a favorable image with other segments of the public. No doubt my activities have created a bad image in racist and reactionary circles, and they may also have created a bad image in certain conservative circles. But at the same time I think they have created a very favorable image in liberal circles. Likewise I think they have created a favorable image for the Law School among many students in the University and among liberal lawyers, in this state and in other parts of the country. So, while these kinds of activities may alienate some segments of the University public—broadly defined—it has a very positive effect with other segments of that public.

Commentator: Let's consider the draft for a moment. Do you have any proposals that you would like to see become law?

Mr. Sedler: I believe that if we have a draft law in the democratic society, it has to be a completely equitable draft, essentially one without exemptions and without defements, so that everyone has a equal chance to serve in the military forces and to give up his life. This way, with everybody going, you can be sure that the public will support a war with its own blood. As the draft law as is set up now, the poor—not the very, very poor who get excused because they don't meet the physical and mental tests—but the people in the lower economic classes—the guy who has graduated from high school but can't afford to go onto college or the guy who is working and doesn't go onto college, bear the brunt of the dying in the war. I think if you are going to have a draft, then it should be an across the board draft where everyone, by some method of lottery selection or otherwise, has an equal liability for service. My personal belief is that in today's world of highly sophisticated armament we can recruit a sufficient defensive army purely on a voluntary basis. We may need a professional army—at least until disarmament takes place, if ever—need a professional army and a professional army can be recruited. It wouldn't be nearly the size we have today. However, if we are going to intervene in wars like Vietnam, if we are going to station troops all over the world, if we are going to be as, the term has been used, the policemen to the world, then we would obviously need a draft. Obviously my view is that we should not be the policemen to the world, that we should not intervene in a civil war merely because one side is labeled "communist," and I think with the American public is coming around to this point of view. I think it is

Continued On Page 4

AMICUS CURIAE . . . Friends Of The Court

DUE PROCESS IS NOT A REALITY IN THEIR SOCIETY

Today, particularly since the inception of the legal services program of the Office of Economic Opportunity, the national policy, in this country seems to be that a citizen, regardless of color or race; poverty or ignorance, has a RIGHT to adequate legal counsel. This right is as important as a citizen's right to an education, to employment, to decent housing, to adequate food, and to the services of a doctor.

The LEGAL SERVICES PROGRAM offers to poor people an opportunity to resolve their grievances against society. To the poor, society consists of the loan shark, exploitive storeowners, and the repossession of a car; eviction notices, job dismissal notices; suspension of welfare benefits, divorce, and unpaid appointed counsel for indigent defendants. DUE PROCESS is not a reality in their Society.

East Kentucky, in particular, has been a focal point for the creation of the poverty program and for much of the social, educational and economic legislation since 1961. Yet, the College of Law of the University of Kentucky has made no meaningful commitment of its resources in the development of Legal Services for the poor in the State of Kentucky. And, to the extent that the poor turn to violence as a method of seeking redress of grievances, the College of Law must bear a large measure of the responsibility for not undertaking the burden of overcoming political and Bar Association pressure to assure justice to the poor.

The College of Law has not seized the opportunity to give direction to these programs. Yet, the College of Law has the capacity in men and ideas to develop the resources necessary to undertake part of this burden. The College of Law ought to implement curriculum changes and establish a program development staff capable of creating and supporting legal services programs in Kentucky. The policy of the College of Law ought to be one of initiating action in this area. This is the least to be required of those who preach law reform and who seek to be the vanguard of law and order, due process and justice.

Larry M. Greathouse

THE ELECTORIAL COLLEGE— NOT A CUT AND DRIED ISSUE

In his customary sonorous manner, Sen. Everett Dirksen has informed us that some reform of the presidential electoral system is inevitable this year. From across the aisle has come the proposal of Sen. Birch Bayh to abolish rather than reform the system.

Behind these moves is the growing disgruntlement of the American people with the indirectness of their role in choosing their chief magistrate. According to the professional analysts, the disgruntlement became horror when, on election night 1968, the nation seemed on the verge of the "constitutional crisis" of the election going to the House. The decision of the North Carolina orthodontist-elector to flout the will of that state's electorate was the denouement of the gripping drama unfolded by the professional pundits.

These events, coupled with the contemporary emphasis upon democratization of the political process, have made the abolition of the electoral college more likely than at any time in our history. That the proposal will enhance the role of the people in determining their destiny seems to many to be sufficient reason to support it. But an analysis of the proposal should not stop with the listing of one beneficial aspect. Before we leap to its support under the banner of democracy, we should carefully consider the reasons advanced in its support and its potential effect upon our political system.

Proponents of abolition of the electoral college have advanced several indictments of it. However, their proposal of direct election involves parallel shortcomings, perhaps more serious than those of the electoral system.

Would the possibility of the candidate with an electoral majority, not having a popular majority be any greater than the possibility of the candidate having a popular plurality; not having a popular majority?

Would the selection of the President by 435 duly elected Representatives of the people be as odious as a close popular election possibly decided by manipulations in such bailiwicks as Cook County, Illinois?

Would the period between the casting of popular ballots and selection by the House be any more disastrous to popular confidence in the government than the inevitable period of recounting ballots and resolving charges of fraud which follows a close popular election?

Even if these questions can be resolved in favor of direct election, there is still another potential weakness of that proposal. It is that, in view of the contemporary political environment, abolition of the electoral college may be the final catalyst in the destruction of the two party system.

Traditional American political activity has been bipolar, but not because American political thought is bipolar. Few political arenas have a greater diversity of ideas, both philosophical and practical, than does America.

A major force in creating the dual coalitions of these ideas is the winner-take-all nature of electoral politics. Of course, various fringe parties are a recurring element. But even in the violently diversified political situation of 1968, none of the additional parties on the left or the right achieved a large following. Their ideas may have had a profound impact on the eventual outcome, but it was on the stance which the major parties eventually assumed.

If the bar of the electoral system were removed, a likely result would be the fragmentation of partisan groupings. The resources of money, manpower, political power and tradition which the established parties can command might enable them

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Professor Sedler . . . ON THE STAND

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very clear that Vietnam has alienated large sectors of the American public from this kind of policy. Once this policy is abandoned, we will no longer need a draft. President Nixon, for example, has proposed abolition of the draft after the Vietnam war comes to an end. My view is one we do not need a draft if we are going to maintain a defensive army. On the other hand, if we must have a draft then it should be one that is fair and equitable, which the present draft is not.

Commentator: Did you support Humphrey or Nixon?

Mr. Sedler: I supported Humphrey.

Commentator: Humphrey did not specifically state that he was for a volunteer army as did Nixon. Why did you support Humphrey?

Mr. Sedler: Well, I think you make your choice of a presidential candidate on a number of factors. I wasn't particularly happy with either candidate, I would have much rather have seen Rockefeller get the Republican nomination and McCarthy or Kennedy (if he had lived) get the Democratic one. When it came to a choice I thought that Humphrey was stronger on the domestic problems and I thought he had enough good ideas on foreign affairs, so that on unbalance, he was the one that I favored.

Commentator: Do you think that your political beliefs carry over into your classroom presentation?

Mr. Sedler: You can't separate my "political,"—I am using that term in a broad sense—my "political belief" from my views about the law. My general views about the law—about the role of law in society, about the function of the lawyer, obviously, carry over into my teaching. On the other hand, I have particular views about the substantive areas of law in which I teach, particular views about the conflict of laws, particular views about remedies, particular views about civil rights. It is this latter area where my political beliefs, as you put it, become significant. I think any teacher has to be conscious about his bias in presenting material, even in the "non-political" situation. The people who have taken my course in conflicts know that I have very strong views about the proper approach to the solution of conflicts problems, and I make it very clear what my views are. But I try very hard to take account of this and to make sure, perhaps bend over backwards, to present competing views. It is not possible for anyone to be throughly objective. If you are, or think you are, you become a machine and no one pretends to attain complete, I think, objectivity. In the academic context the teacher should present his ideas and indicate the values represented by those ideas. At the same time he might try to present to the students competing views and competing values with the hope that by this method they will be able to develop their own ideas and see how those ideas relate to their own value systems. I don't think that I am guilty of attempting to indoctrinate students into a particular viewpoint. On the other hand, when I have views in the class or elsewhere, I don't hesitate to express them. I also think that it is a sound method of teaching to present views of the instructor for the student's reaction.

Commentator: You have said that the poor people bear the brunt of the dying. What do you mean by that specifically?

Mr. Sedler: As a result of the 2-S student exemption, people who can go to college—and in this country anybody that can afford to can go to some college somewhere—can postpone their military service until they are 22 or 23. If they are called, and now more are called as a result of the 1967 Act, it is pretty sure that they are not going to be going into combat units. The army likes younger people, and in fact less educated people for the combat units. Thus, the people who do not go in to college, when they are drafted, are far more likely to be sent to combat units. The college graduate can usually get something else. The effect is that the poor do the dying in the war.

Commentator: Do you think that the majority of the people in the United States consider militarism as synomous with patriotism and do you think that since the U.S. is a leading military power this is a dangerous situation?

Mr. Sedler: Well, I have had my contract with the military both as an enlisted man for six months and as a reserve legal officer, and certainly within the military every effort is made to equate patriotism with military service. You are never really patriotic unless you are willing to go out and kill. I think that the present generation of adult Americans whose attitudes were formed during World War II and during the cold war period immediately afterwards hold this view to a very large extent. I think that the younger generation of Americans do not equate patriotism with military service, particularly in a war such is Vietnam. Many of them feel, as do I, that what is going on in Vietnam is contrary to the principles of self-determination on which this country was founded. We're using our power to intervene in what is essentially a civil war between groups of Vietnamese, and we have sacrificed in excess of 30,000 American lives to support a reactionary regime because the other side has been labelled as "communist,"—whatever that word means in poor, underdeveloped country such as Vietnam.

Commentator: I was interested to note that the class average in your Conflicts of Law Class for this past fall increased from about 66 to about 71 this year. Are you getting more lenient in your grading or are the students better?

Mr. Sedler: It is always possible to say that after you have been around longer you have more of the sense of what can be expected of the student and you become easier in your grading. I really don't think that is the case here, however. The class was smaller this time than it has been in the past because we now offer it both semesters. I had a small class when I offered the course in the summer of 1967, and grades were also higher. I think it is probably due to the fact that the class was smaller, and secondly I think the students take me seriously now when I say that I am going to grade hard. It honestly seemed that the papers were better; at least I didn't have that sense of frustration and disappointment that I normally have when I read most of the conflict papers.

Commentator: Do you think the local bar associations of Kentucky have responded to the problem of unequal legal representation for indigents or minority groups?

Mr. Sedler: They have made an effort to respond to it in a way that they sincerely believe to be sound, namely a voluntary legal aid program. Here I am thinking of Fayette County in particular. I happen to believe this will not basically deal with the problem. The representation is somewhat limited—Legal Aid handles criminal cases and certain kinds of civil cases. The people don't really know about the program, and there has been no concerted effort publicized. Moreover, I think that the only way that poor people get effective legal services is if you have law offices in the neighborhoods where they live, offices where they can go, not after they have been sued, or not after they have been arrested, but where they can go to discuss a legal problem before it arises. If they are having trouble with their landlord, they could talk to a lawyer to find out what their legal rights are and act accordingly. Then, I think also that the whole matter of poverty law is something to which we haven't paid much attention. It is only in recent years the law school curriculum has concerned itself with the kind of law that affects the rights of poor people. Our property courses, for example, concentrated on wealth transmission, not on slumlords nor rights of tenants against landlords. Nor have we until relatively recently offered courses in social legislation, welfare benefits and the like. The result is that most lawyers are not really equipped to deal with the problems of poverty law. They don't often arise in everyday practice. Finally, Legal Aid is conducted on a voluntary basis, and there is a very uneven representation. It is a matter of how many lawyers actually take Legal Aid cases and in what percentage. I think if you would look at the actual incident of representation, you would see that many of the Legal Aid cases are handled by younger lawyers, those who in a way can least afford to give up their time. A lawyer has to make a living, and although many lawyers sincerely try to do a good job, you can't really expect the lawyer to consistently devote the time to free cases that he devotes to the cases of his paying clients. So, I don't think that the bar has made an all out commitment to providing legal services for the poor, and I think that the method they have used is one that is necessarily inadequate.

Commentator: What are your plans for the future, do you plan to stay at U.K.?

Mr. Sedler: Well, yes. All I can say is this. We can never say with absolute certainty what we are going to be doing tomorrow if a certain kind of opportunity comes up. I came here because I was very excited by the law school and by the opportunity to teach law in this state and to do work in this state. Since I have come, I felt that my view was justified. It is a very exciting place. I think that we have an excellent law school, it has an excellent reputation nationally, probably even more so than locally. I have also found the work that I am doing in the community and in the state very rewarding. So, I say that I plan to stay. This means that I am not looking for other opportunities, and when I get feelers, as they are called, from other schools, I let them go. So my plans at this point are to stay on. I am not going to vouch as to what I am going to do five years or ten years from now, nor am I going to say that something might not happen which might make me decide to go somewhere else, but my present plans are to stay here.

Commentator: At the close of your professional career, what do you hope to have accomplished? Do you have any goals set out in life that you are pursuing?

Mr. Sedler: I don't know. I never really thought that far beyond. I guess that when I started law school I thought I was going to go into politics and naturally like any person who thought he was going to go into politics I aspired for high political office. I decided while I was in law school that I was more interested in the law itself than in politics, and I did not want an active political career. And I decided that I would find my greatest satisfaction in teaching and research. I don't really think that far beyond, and I concentrate on what I'm doing now. I feel that I am making a contribution by teaching students, by researching into the law and publishing my findings and by participating in significant litigation and public affairs. Now when I reach mandatory retirement age 32 years from now, I don't know if I'll look back and say, "Well, I really accomplished something." But in terms of specific goals, such as being a Governor or a Judge, or something of that sort, I don't have any of those goals.

AMICUS CURIAE . . . Friends Of The Court

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to withstand the pressure. But the chance of additional parties becoming viable political forces of some permanence would no longer be remote and their adherents would no longer need to desert the cause "to make their vote count."

This might remove the formation of the coalition necessary to govern the nation from its place in pre-election maneuvering within a partisan group and place it in post-election maneuvering among several partisan groups. The change would also eliminate the solitary partisan allegiance which is presently the cement of such coalitions, and thereby seriously weaken their ability to govern.

Ironically, the bargaining and maneuvering necessary in a multi-party system is the very antithesis of the "decision by the people" advanced as the primary asset of the direct election proposal.

This is not to suggest that the electoral college is a sacred cow which should remain untouched. The two-party system necessary for effective government can be maintained by an amended system. One such amendment should either prevent electors from breaking their pledges, or simply make electoral votes automatic rather than cast by individuals.

A more fundamental alteration, calculated to achieve the increase of public control sought by the proponents of direct election, is a direct national primary election for the major parties. Such reform is more appropriate not only to our system, but also to the mood of the electorate. For the people were not so disturbed with which of the two major candidates emerged from the electoral process as they were that those two emerged from the nominating process.

Sheryl Snyder

LETTER TO THE COMMENTATOR

I enjoyed reading your On The Stand, an interview with Professor Guido. I have no idea what sort of professor he is but I liked very much the comments he made in the interview.

A practicing attorney must be a leader and regardless of his academic record, if he is not a leader, he, in my opinion, will make a very poor practicing attorney.

I hope that you will continue to have articles such as this in your paper.

Barry Benton, Attorney
Lexington, Ky.

BETTER LATE THAN NEVER

We would like to take this opportunity to congratulate the faculty on their "new academic experiment," i.e., non-graded final exams. We feel it is altogether fitting and proper that final exams not be graded. After all, most students agree that final exams are a waste of time.

However as of February 1, we have learned that some professors have very good reasons for not having graded their papers. For instance, we can understand Mr. Sedler's tardiness—he has been reclassified I-A by special act of the legislature. Or certainly no one could fault Mr. Whiteside because he has graded his papers—its just that he can't find the second year bulletin board. We have heard that Dean Matthews has his finals graded but Miss Dunn hasn't told him that he can post them yet. Mr. Guido simply hasn't had the time to grade his papers—he's still reading his assignments. On the other hand, Mr. Ham hasn't been able to grade his tests because he has misplaced his "Ham-O-Gram"—and Mr. Richardson lost his "key," but he need not worry; at least five students would loan him their's. However, students should not worry since all grades from last semester are now void because the Statute of Limitations has run.

In all seriousness, WHY?

Dan Kemp
Tom Russell

The Kentucky Commentator

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